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What Every New Home Buyer Should Know



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About the Ontario New Home Warranty Program

New home buyers in Ontario receive substantial warranty protection, set out in the Ontario New Home Warranties Plan Act. A non-profit corporation, the Ontario New Home Warranty Program (ONHWP) administers the Act—registering builders, enrolling new homes and resolving disputes. The Program is paid for by fees builders and vendors pay to register with ONHWP and to enrol the new homes they sell.

The Program also provides information about builders and home buying to consumers, technical assistance to builders, and informs lawyers, real estate agents and mortgage lenders about the Program and the Act.

ONHWP has offices across the Province and reports annually to the Ontario Legislature through the Minister of Consumer and Commercial Relations.

How the Program works

Anyone building or selling a new home in Ontario must register with ONHWP, and enrol each new home or condominium unit. When a home is completed, the buyer and builder sign a Certificate of Completion and Possession (CCP) which confirms to the Program that the sale has taken place. The CCP is also the place for the buyer to note any repairs required. The builder sends the CCP to the Program, and the Program sends the buyer a Warranty Certificate and information package.

Basic warranty protection from the builder is for one year for most items, and two years for some items (see the section, What is Covered). Coverage for Major Structural Defects is for seven years. Problems arising during the builder's warranty period should be brought to the builder's attention by the buyer during the

warranty period. If the builder does not correct the problems, the Program will help resolve the dispute.

What is Covered

- 1. Deposits.** When you buy a new home, you are covered for financial loss, including your deposit, to a maximum of \$20,000 if the builder cannot or will not complete the sale through no fault of yours. (This refers to completing the sale of the home, not its construction.)
- 2. Incomplete work.** If you have title to your home or condominium unit and are living in it, ONHWP will compensate you for completion of any unfinished work to a maximum of 2 per cent of the home's price or \$5,000, whichever is more. The incomplete items must be part of the Agreement of Purchase and Sale. If you're living in a condominium unit but do not yet have title, and find some work left undone, call the builder first. If that does not produce action, call us for advice.
- 3. Basic warranty. defects in workmanship and materials (1 year).** The builder warrants for one year from the date on the Warranty Certificate that the home is free from defects in workmanship and materials, is fit to live in and meets the Ontario Building Code. Tell the builder about any defects in writing before the first year is up. If the builder does not act within a reasonable time, write to us about the problem, again before the year is up. (Builders will pass on to you any warranties made by manufacturers, suppliers and subcontractors that extend beyond the first year. In those cases, you should make any claims directly to the manufacturer or distributor.)

4. Two-year warranty:

A) "Power Train" Items. For homes enroled after December 31, 1990, the builder warrants that the home is fit to live in, that it is free of violations of the Ontario Building Code's health and safety provisions, that it is free of defects in material or workmanship in the electrical, plumbing, and heating delivery and distribution systems; in the exterior cladding, caulking, windows and doors; and that the building envelope (all parts of the structure that contain the living space) is free of water penetration.

B) Basements leaks. The builder warrants for two years that the basement remains free of water penetration through the foundation. In condominiums, this protection includes all below-ground areas such as parking garages.

5. Major Structural Defects (7 years). For homes enroled after December 31, 1990, the buyer is protected for seven years against Major Structural Defects. For homes enroled before that date, the protection lasts for five years. Coverage under this provision is by the builder initially, and after the builder's warranties expire, it becomes the responsibility of the Program. Under the Act, a major structural defect is defined as any defect that results in failure of a load-bearing part of the house's structure, or defects in materials or workmanship that adversely affect the use of the building as a home.

6. Delayed closings & Delayed occupancy. Similar rules govern delays in the closing date, and, for condominium units, delays in the occupancy date.

A) Delayed closings. The builder must not delay the closing date on your home without notifying you. For minor delays of

no more than 15 days, you must be notified at least 35 days before the original closing date. For longer delays, the builder must give you at least 65 days' notice and set a new closing date. In either case, the builder gets five days without penalty. Beyond that, you can claim compensation of up to \$5,000 for out-of-pocket expenses resulting from the delay.

To be compensated, you must close the sale. If the builder refuses to close, call us for advice. You are covered for reasonable moving costs and the cost of storing your possessions, plus up to \$100 a day in living expenses. Claim forms are available through builders. You'll need receipts for out-of-pocket expenses, although receipts aren't required for incidental expenses of up to \$25 a day.

Exceptions. There is no compensation for delays caused by things out of the builder's control, such as floods, natural disasters, or fires and strikes.

When a strike occurs, contact the builder to keep advised of the situation. When the strike is settled, your builder should set a new closing date. If you and the builder cannot agree on a reasonable date, we can help you settle the dispute.

B) Delayed occupancy in condominiums.

For all condominium purchase agreements signed on or after March 1, 1991, the following rules apply:

- ☐ Every Agreement of Purchase and Sale must give either a confirmed occupancy date, or a tentative occupancy date that is clearly labelled tentative. If it gives a tentative date, the purchaser has the right to receive notice of when he or she will be told the confirmed occupancy date. The notice is to be based on a date or event that will trigger it — for example, the purchaser is told that he or she

will be given the confirmed date when the foundation is complete, or when some other stage in construction is reached.

- ☐ The purchaser must be given this notice no later than 120 days before the confirmed date, and no later than 30 days following completion of the roof assembly.
 - ☐ If the purchaser is not given notice of the confirmed date by 90 days prior to the tentative date in the original agreement, then the tentative date automatically becomes the confirmed date.
 - ☐ The builder is allowed to offer occupancy earlier than the confirmed date, but is not allowed to demand it. The purchaser must consent to it in writing.
 - ☐ As is the case for delayed closings for houses, the vendor may extend the confirmed occupancy date **once** by up to 120 days, if the purchaser is given written notice at least 65 days before the confirmed date. The vendor can also have a 15-day extension if the purchaser is given 35 days' notice.
 - ☐ In all cases, vendors are permitted a five-day grace period when they give notice to their purchasers. Beyond that, any vendor who fails to give proper notice will be required to give the purchaser compensation of up to \$100 a day for living expenses and other expenses incurred as a result of the delay, to a maximum \$5,000 total direct costs.
 - ☐ A vendor is **not** responsible for delays caused by strikes, fires, civil insurrection, floods or "Acts of God."
7. **Substitutions.** You are protected against substitutions of key elements of your new home or condominium unit, and in condominium common elements (i.e., the

shared areas — parking garage, hallways, and so on). If significant changes are made without your approval, you may be able to cancel the agreement and get your deposit back, and/or claim damages up to \$20,000.

Examples of builder substitutions not allowed include:

- major changes to the original plan
- reverse (“mirror image”) plan
- house model and style of exterior
- brick color and type of exterior finishes
- exterior dimensions of the house
- condominium unit model and style

Your Agreement of Purchase and Sale may also give you the right to choose certain colors and styles. If so, the builder cannot substitute these without your consent. If he does, you can demand that they be changed back, or the builder must make a cash settlement. Examples include:

- interior and exterior paint colors (not shadings)
- design and color of cabinets and countertops
- color and type of kitchen and bath fixtures
- style of interior trim
- floor finishes

If the builder cannot supply your choice of color or finish, you must be notified in writing. You have seven days to make new selections. If you don’t, the builder has the right to substitute options of equal or better value.

NOTE: The maximum liability for warranty coverage on any new home or condominium unit is \$100,000. Individual condominium units are protected in the same way as houses. Common condominium elements are also covered from the date the project is registered, up to a maximum of \$50,000 times the number of units, to a maximum of \$2.5 million.

What is not covered

1. **Unfinished homes.** The Program does **not** employ contractors to complete unfinished homes (Although we do compensate for incomplete work in homes that are sufficiently complete to meet the definition of a home under the Act — see the section on Incomplete Work). In a custom-built home being constructed under contract, it is the purchaser's responsibility to supervise and pay for completion, and to comply with the Construction Liens Act. For other homes, it is the builder's responsibility to complete the items specified in the Agreement of Purchase and Sale.
2. **Defects in materials,** design and workmanship in anything supplied by the buyer.
3. **Secondary damage** resulting from defects that are under warranty. The defects themselves are covered, but the personal or property damage they may cause is not.
4. **Normal** wear and tear.
5. **Normal shrinkage** of materials that dry out after construction.
6. **Damage** caused by dampness or condensation caused by the homeowner not maintaining adequate ventilation.
7. **Damage** caused by improper maintenance.
8. **Changes** made by the buyer.
9. **Settling soil** in land around the house or along utility lines. (However, soil settlement under the building foundation itself is covered.)

10. **Damage** due to the effects of floods or acts of God, the owners, tenants, guests, wars, riots, insurrection, civil commotion or vandals.
11. **Damage** from insects and rodents (except when the construction did not meet the Ontario Building Code).
12. **Damage** caused by municipal services and other utilities.
13. **Surface defects in workmanship** and materials that were noted in writing and accepted by the owner at the date of possession.
14. **Temporary or seasonal dwellings** (such as cottages) that are not built on a permanent foundation and do not have insulation that would make them habitable year-round.
15. **New homes** built on existing footings or foundations.

Tips on home buying

- ☛ Deal with a reputable and reliable builder. Make sure the builder is registered with ONHWP and has enrolled the home or condominium unit. Ask the builder for his or her registration number and for the home's enrolment number, then call your local ONHWP office and check them both. You can also consult our Home Buyer's Guide to After-Sales Service for information on builders, or call and ask us about any builder.
- ☛ Contact the municipality to find out the status of the subdivision or condominium project and to make certain that a building permit has been issued for the house or building.

- 👁 Be sure to have a lawyer check all aspects of your new home purchase. Have the lawyer help put the Agreement of Purchase and Sale together and review it before you sign it.
- 👁 Make sure you understand the agreement. If you are buying a house (not a condominium), it is the builder's responsibility to attach a document called the ONHWP Addendum, containing important consumer protection information, to the agreement. Be sure that he does that.
- 👁 Make sure all details of the purchase are included in the agreement, including any special options you're buying, such things as appliances, broadloom, special fixtures and finishes, countertops and cabinets and so on. These are covered by the Warranty Program against substitution without your consent, but only if they are written into your Agreement of Purchase and Sale. Verbal agreements cannot be enforced.
- 👁 Be sure you get a deposit receipt from the builder. If you are buying a condominium unit, you should receive an ONHWP Deposit Receipt from the builder.
- 👁 Get permission from the builder to inspect the home or unit during the later stages of construction to make sure your selected colors, finishes, etc., have not been changed.
- 👁 When you take possession, be sure your builder gives you a Certificate of Completion and Possession (CCP) to sign. Before you sign it, check the home for defects like broken windows or tiles, chipped fixtures or other things needing repair. Write them on the Certificate, to establish they existed before you took possession. If there are defects so minor that you don't want to worry about them, your builder representative will ask you to note them on the CCP and indicate that you accepted them. Do this only if you

do NOT plan to ask the builder to fix them later. Then, and only then, sign the CCP. Signing the Certificate does not sign away your right to have the builder fix any other defects covered by the warranty that may arise during your first year in the home.

- 👉 Look for your Warranty Certificate from ONHWP. After the builder sends us the signed CCP, we'll send you a Warranty Certificate with its own number and the date of the start of coverage. Keep it in a safe place along with other documents related to the home. Keep a separate record of the warranty number, in case you misplace the certificate. We can generate another copy of a lost Certificate if you give us the number. If you don't receive your Warranty Certificate within six weeks after you sign the CCP, call us.
- 👉 If you're having a house built on your own land and you contract with a registered builder for the job, you're covered by the Program, too. Make sure the contract specifies the builder's registration number and that the home is enrolled with us. In addition, make sure the contract provides for payments in instalments as the work is done. ONHWP does not cover financial loss resulting from work paid for in advance but never done. As well, the contract should also specify exactly what the builder is to provide, and you should make sure you comply with the Construction Lien Act. Have a lawyer prepare the contract.

If you have problems

There are many reasons why it may be difficult to get through to your builder — but be persistent. If phone calls don't bring results, write to confirm your conversations or to ask for information about your problem.

During the builder's warranty periods:

Send letters to the builder by registered mail, and ask the post office for an "AR" (acknowledgement of receipt) sticker. This includes a section to be signed by the person receiving your letter and returned to you as proof of delivery. File it with the registered mail receipt and a copy of the letter. Also, send us a copy of all your letters to the builder.

Be sure to bring any problems to the attention of the builder, and to ONHWP, before the end of the warranty period. In your letter, give the warranty number, the lot and plan numbers or condominium address and unit number. Describe the problem and ask the builder to correct it. Have someone proof-read the letter to make sure it cannot be misunderstood. If the builder does not reply within a reasonable time, write to us.

Problems with condominium common elements should be brought to the attention of the condominium's board of directors, which is formed after the complex is registered. If problems arise before the project is registered, the unit holders should form a committee and contact ONHWP for assistance.

After the builder's warranty expires:

Write directly to us about any major structural defects after builder's warranty expires, up to the end of the five or seven-year warranty period. Remember, certain parts of your warranty coverage, including water seepage through the foundation into the basement, are covered by the builder for two years. Know your warranties.

Resolving disputes

If you have a dispute with your builder that you cannot resolve, write to us about the problem before the end of the builder's warranty period. We'll investigate and conciliate the dispute.

You pay a deposit of \$50 for this service, which is refunded if the complaint turns out to be a warranted item. You'll also receive a written report from the conciliator. Usually, we resolve these disagreements quickly and both buyer and builder are satisfied with the result. If you're not, however, you can appeal to the Commercial Registration Appeal Tribunal.

If you sell your home or condominium unit

When a home changes owners, it continues to be covered up to the end of the warranty period. The seller gives the Warranty Certificate, along with any other related documents, to the new owner. The new buyer should check with us about the remaining term and dollar coverage of the warranty.

Of special interest to condominium buyers

Condominium buyers receive full warranty protection, like any other home buyers. But because condominiums are made up of both individual units and shared areas called the common elements, there are some differences:

- ❑ Condominiums have two sets of warranties: One for the homeowner covering his or her unit and another for the condominium corporation and its board of directors, covering the common elements of the building.
- ❑ Once the project is registered as a condominium corporation, a Board of Directors, representing the unit owners, is elected. The Board should arrange with the builder for the Certificate of Completion and Possession on the common elements. As with individual units, any defects should be written on the CCP for the common elements.

- ❑ Common elements are covered from the date the condominium corporation is registered, but an individual unit is covered from the date you move in. You won't actually get title to your unit until the entire complex is registered, which can be anywhere from a few months to several years after you move in. But you should still bring any problems to the builder's attention during your first year of occupancy, when the main part of its warranty is in effect.
- ❑ Closing dates depend on registration and are out of the builder's control, so condominium buyers aren't compensated for delays in closing.
- ❑ Condominium unit owners should write to their board of directors (once the condominium is registered) about any problems in the common elements. The board should then take the complaint to the builder and to ONHWP, if necessary.
- ❑ If the board believes the builder is not acting in good faith to resolve the complaint, the directors should submit a list of the specific defects to ONHWP. The board may want to hire an engineer to perform a technical audit to support the complaint, although this is not required.
- ❑ The board should then ask ONHWP for a "pre-conciliation meeting," to bring them together with the builder and an ONHWP representative, who will try to negotiate a settlement. If a settlement cannot be negotiated, the next step is for the board to ask for a conciliation. This is another meeting between both sides and an ONHWP representative, who will make a written ruling on whether the defects are covered by warranty and, if so, set a time frame for their repair.

- ❑ If most units are still owned by the builder when the project is registered, that builder could be dominant on the condominium corporation's Board of Directors. In such cases, unit owners may find it useful to form a committee to present their concerns to the Board and then — if necessary — to ONHWP.
- ❑ If a builder does not comply with a conciliation decision, we may have the work done and bill him for it. Or we may make a cash settlement to the board and then deal directly with the builder on his failure to comply.
- ❑ If either side in the dispute disagrees with the conciliator's ruling, they may appeal it before the Commercial Registration Appeal Tribunal.

If you become a Member of the Board

- ❑ As a Director on your Condominium Corporation's Board of Directors, your many duties include the responsibility of making the Ontario New Home Warranty Program work for the unit owners. In some cases a Property Manager is hired to do much of this work, but he or she will turn to the Board for important decisions. Therefore, you should familiarize yourself with the Program and how it works.
- ❑ From the date your complex is registered, the builder is responsible for the one- and two-year warranty obligations described earlier, with respect to the common elements. If a unit owner complains about a common element problem, the owner writes to the Board and the Board handles the complaint, with the Builder and with ONHWP.
- ❑ It is now common practise for a condominium Board of Directors to hire an engineer to perform a technical audit which is submitted to ONHWP. The Program is in

favor of this but does not require it.. The technical audit will, however, provide strong support for the list of deficiencies that the Board is expected to submit to the Program whenever there are deficiencies in dispute between the builder and the Board.

- **The Program has a variety of helpful literature for both home purchasers and builders. Call your nearest Regional Office for information.**
- **We can also supply a guest speaker for your meeting or seminar, to talk about the Ontario New Home Warranty Program and you.**

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